

Question L-175: With regard to Vol II, Criterion 4, Past Performance Letter and Questionnaire: Many of the best examples of past performance may have been performed for firms also competing on this procurement. As such, there is a high potential for a perceived or real conflict when requesting responses to the Attachment L-5s. Does DOE have any recommended mitigation for this potential OCI?

Answer: Reference Section L.31 (4) Criterion 4 – Relevant Past Performance and Attachment L-5. DOE does not necessarily agree that the above constitutes an Organizational Conflict of Interest (OCI) under FAR 9.5 precluding award of a contract or requiring a mitigation plan. It appears that the concern being expressed is based upon a belief that a potential competitor (including another offeror, its teaming partners, its proposed major or critical subcontractors and/or any other of its proposed subcontractors) may intentionally provide or be perceived to intentionally provide inaccurate less favorable past performance information for the offeror's referenced contracts/projects. DOE does not necessarily agree with such. However, if an offeror has this concern regarding a particular referenced contract/project, the offeror should provide the Attachment L-5, Performance Questionnaire to a government source or an independent source familiar with the work that the offeror has performed on the referenced contract/project. Although not necessary to do so, the offeror can if it chooses to do so indicate in its proposal that it is providing the government source or independent source in lieu of the company with which it had the contract/project based upon the above. The offeror can also request that if the entity or point of contact from which it requested an Attachment L-5, Past Performance Questionnaire be submitted ultimately turns out to be a competitor that the Past Performance Questionnaire not be considered. To the extent DOE has not obtained any other information regarding the referenced contract/project, the referenced contract/project will then be treated in a neutral manner.

Question L-176: Reference: RFP page 84, L.31, Proposal Preparation Instructions, Volume II, Criterion 2 – Relevant Experience, requires that the Experience and Past Performance Reference Information Form be limited to no more than three (3) contracts from the offeror; or three (3) contracts for any major or critical subcontractor; and, if a joint venture or newly formed entity, three (3) separate contracts for each of the members. This limitation upon the offeror of no more than three (3) contracts while allowing additional presentations for major subcontractors and teaming members provides incentive to offerors to create complex teaming and subcontract arrangement in order to provide a more complete presentation. Ironically, as DOE has seen in some current contracts, teams of such complexity creates management teams that may be less responsive to DOE's requirements. Additionally, the offeror whose goal is to present a team of superior contractors with a tightly integrated management and technical support structure is placed at competitive disadvantage by being limited by the presentation of no more than three (3) contracts. Such disincentives to an offeror may actually serve to prevent an otherwise superior offeror from presenting a proposal reflective of its actual capabilities. We respectfully assert that the current limitation: (1) is not to the best benefit of the DOE in that it serves as an incentive for offerors to provide complex teaming and subcontract arrangements; and (2) places offerors who would provide a tightly integrated management and technical support structure at competitive disadvantage. We request that the Experience and Past Performance Reference Information Form be limited to no more than six (6) contracts total, unless a team member or major subcontractor would be provided from presenting its experience and past performance, in which case the Experience and Past Performance Reference Information Form be limited to one (1) contract from each offeror, its team member, and major / critical subcontractor.

Answer: Reference Section L.31 (2) Criterion 2 – Relevant Experience. Initially, it is not clear how offerors that provide a tightly integrated management and technical support structure comprised of superior contractors would be at a competitive disadvantage under the proposal preparation instructions regarding the Experience Criterion and the Past Performance Criterion. Instead, it appears that the question and the suggested language would through use of the Experience Criterion and Relevant Past Performance Criterion place constraints upon the manner in which offerors choose to form teaming arrangements as well as how offerors choose to perform and their ability to decide how to best perform the work. The number of contractors that form a team as well as the number of contractors that an offeror believes is superior or necessary for their approach may vary from offeror to offeror. DOE does not believe placing constraints upon such is in DOE's best interests. Additionally, the suggested language

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may accidentally eliminate the ability of offerors to provide past performance for major or critical subcontractors. However, pursuant to FAR 15.305, the Government should take into consideration in its evaluation of past performance, the past performance of subcontractors that will perform major or critical aspects of the work when the information is relevant to the acquisition. DOE does not want to eliminate the ability of DOE to evaluate either the experience or past performance of subcontractors proposed to perform major or critical aspects of the work, i.e. major or critical subcontractors. The solicitation will not be revised.